In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 375

UNITED STATES OF AMERICA, PETITIONER

v.

CALIFORNIA COOPERATIVE CANNERIES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

MOTION BY THE UNITED STATES TO ADVANCE

Comes now the United States by the Solicitor General and moves the Court to advance the above-entitled cause for hearing on a day convenient to the Court.

STATEMENT

Under Section 4 of the Sherman Antitrust Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C. Title 15, Sec. 4), and Section 15 of the Clayton Antitrust Act of October 15, 1914, c. 323, 38 Stat. 730, 736 (U. S. C. Title 15, Sec. 25), the United States, as complainant, on February 27, 1920, brought a suit in equity

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in the Supreme Court of the District of Columbia against the above appellees, and others engaged in the meat-packing industry, to restrain and enjoin them from threatened violations of the aforesaid Acts. (R. 1–17.)

On the same day a final decree was entered by consent of the parties enjoining various threatened acts and practices of the defendants therein, as prayed in the petition: *Inter alia*, the continued holding by defendants of capital stock in public stockyard market companies and terminal railroads, and the continued handling by defendants of and dealing in commodities unrelated to the meat-packing industry, such as wholesale groceries and canned goods. (R. 118–131.)

In 1922 the California Cooperative Canneries filed motion in the Supreme Court of the District of Columbia for leave to intervene in this suit, accompanied by its intervening petition. (R. 147–218.) The motion was denied (R. 266, 303, 304) and the Canneries appealed to the Court of Appeals of the District of Columbia (R. 305), which, in 1924, reversed the lower court (R. 308), and ordered that the Canneries "be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition" (R. 315), issuing mandate accordingly to the Supreme Court of the District of Columbia (R. 315–317). In the proceed-

ings which followed in the court below the court, on motion by the Canneries, suspended entirely the operation of the consent decree of 1920, pending the completion of the proceedings ordered by the Court of Appeals. (See Transcript of Record in *Swift & Co.* v. *United States*, No. 181 Oct. Term, 1927, pp. 322, 341.)

The subsequent decision by this Court in *Swift & Company* v. *United States*, 276 U. S. 311, held that the Court of Appeals is without jurisdiction to entertain appeals from final decrees in antitrust suits in the Supreme Court of the District of Columbia. The Government accordingly, on April 24, 1928, filed a motion in the Court of Appeals to set aside its judgment and mandate of 1924 on the appeal of the Canneries as void for lack of jurisdiction. (R. 317.) This motion was denied (R. 321) and the judgment of the Court of Appeals denying it is now before this Court for review on writ of certiorari.

QUESTION PRESENTED

The question presented in this case is whether the Court of Appeals of the District of Columbia had jurisdiction to entertain an appeal from a final decree of the Supreme Court of the District of Columbia, entered in a suit in equity brought by the United States under the Sherman Antitrust Act, denying the application of a third party for leave to intervene in such suit.

REASON FOR ADVANCING

The early and final determination of this question and of the whole case is of importance to the Department of Justice in the administration of the Antitrust laws of the United States, both in the District of Columbia and elsewhere. Furthermore, it is impractical to continue with the proceedings ordered in the court below, depending as they do upon the Court of Appeals' judgment and mandate, so long as there is doubt as to their jurisdictional validity. In the meantime the consent decree of 1920, and with it the entire operative results of the principal suit remain in suspension by the lower court's order, which was also entered under authority of the mandate. Thus the decision of the question here presented will govern the Department of Justice in the further handling of this case and in the future administration of the law. An early determination by this Court is therefore desirable.

The record has been printed and the brief for the United States has been filed.

Notice of this motion has been served upon counsel for the respondent.

WILLIAM D. MITCHELL,
Solicitor General.

WILLIAM J. DONOVAN,
The Assistant to the Attorney General.

H. B. TEEGARDEN,
Special Assistant to the Attorney General.

NOVEMBER, 1928.